

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE:)	CASE NO: 18-42529-PWB
)	
KENNETH LEE THOMAS ,)	CHAPTER 13
)	
Debtor.)	
-----)	-----
)	
H-E PARTNERS, LTD, assignee of)	
SOUTHCREST BANK successor to)	
FIRST NATIONAL BANK OF)	
POLK COUNTY,)	
Movant,)	CONTESTED MATTER
vs.)	
)	
KENNETH LEE THOMAS, Debtor, and)	
MARY IDA TOWNSON, TRUSTEE)	
represented by BRANDI L. KIRKLAND,)	
)	
Respondents.)	

NOTICE OF ASSIGNMENT OF HEARING

PLEASE TAKE NOTICE that H-E Partners, Ltd, assignee of SouthCrest Bank, successor to First National Bank of Polk County has filed a **Motion for Relief from Automatic Stay** and related papers with the Court seeking an order lifting the stay.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the motion in Room 342, United States Courthouse, 600 East First Street, Rome, Georgia 30161, at 10:15 A. M. on February 20, 2019. Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U.S. Bankruptcy Court, Room 120, 121 Spring Street, Gainesville, Georgia 30501. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

Dated: January 16, 2019.

Respectfully submitted,

MACEY, WILENSKY & HENNINGS LLP

/s/ Todd E. Hennings

Todd E. Hennings, GA Bar No. 343702

5500 Interstate North Parkway

Suite 435

Atlanta, Georgia 30328

thennings@maceywilensky.com

(404) 584-1234 *Telephone*

(404) 681-4355 *facsimile*

***Attorneys for H-EPartners, Ltd, assignee of
Southcrest Bank, successor to
First National Bank of Polk County***

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MOTION FOR RELIEF FROM AUTOMATIC STAY

NOW COMES Movant, H-E Partners, Ltd assignee of Southcrest Bank, successor to First National Bank of Polk County (hereinafter "Movant") pursuant to Rules 4001 and 9014 of the Bankruptcy Rules and §362 (a) of the Bankruptcy Code, to request relief from the automatic stay provided by §362(a) of the Bankruptcy Code and files this Motion for Relief from Automatic Stay, and respectfully shows the Court as follows:

1.

Debtor filed a petition constituting an Order for Relief under 11 U.S.C. Chapter 13 on October 26, 2018 (the "Petition Date"). Debtor filed his Chapter 13 Plan on October 26, 2018 [Doc No. 7] (the "Plan").

2.

Movant is a secured creditor of the above-captioned Debtor.

3.

Debtor is indebted to the Movant by virtue of two notes secured by first and second position Deeds to Secure Debt, and Commercial Security Agreements with assignment of deed to H-E Partners, Ltd, assignee of Southcrest Bank, successor to First National Bank of Polk County on real property commonly known as 1140 Old Collard Valley Road, Aragon, GA 30104 with 9.25 acres surrounding the residence. (hereinafter the "Property").

4.

The Property is subject to a valid and perfected security interest in favor of the Movant securing an indebtedness in the amount of \$123,887.39 (loan #9997-1157) through January 31, 2019 with a \$25.7315 per diem after January 31, 2019. The second position loan has a balance of \$49,877.17 (Loan #9997-1156) through January 31, 2019 with a \$6.1987 per diem after January 31, 2019. Debtor has valued the property at \$226,334.00 on his schedules. Debtor possesses minimum equity in the subject property, which equity is being eroded on a daily basis. Upon information and belief, this loan is secured by an interest in property serving as the Debtor's principal residence. Therefore, the Debtor may not modify Movant's claims in this case, but instead must provide for payment under the terms of the debt instruments. 11 U.S.C. § 1322(b)(2). Debtor cannot provide such payment, and the treatment Debtor proposes fails to provide Movant with adequate protection pursuant to 11 U.S.C. § 362.

5.

Debtors' Chapter 13 Plan indicated his intent to pay the arrearage on the first priority loan at the rate of \$245.00 monthly starting in January 2019, to include November 1, 2018 payment. The

loan is due for the August 1, 2018 payment, and is in pre-petition default in the amount of \$12,045.00 (Loan# 9997-1157). Debtor's plan proposes to pay the arrearage with no interest. Debtor's monthly payments on this debt are in the amount of \$1,260.00 per month, which Debtor has failed to pay since this bankruptcy case was filed. Debtor is in arrears post-petition for three months. Debtor's second mortgage (Loan #9997-1156) is an adjustable rate loan, which matured under its own terms on June 5, 2018. Debtor is in default, therefore, on this loan and the entire amount of the outstanding balance of \$49,877.17 is due and owing. This post-maturity balance continues to accrue interest at the rate of 10% per month. Debtor attempts to use his plan as a vehicle to write himself a new mortgage, not rehabilitate an existing one. Debtor proposes to pay Movant the sum of \$898.00 per month at 4.5% interest, which does not reflect the applicable post-maturity rate. Debtor has not made any payments on this second note since the Debtor's case was filed. Movant is furthermore entitled to attorney fees with regard to each loan.

6.

Debtor default on payments post-petition creates a lack of adequate protection for the Movant. Pursuant to Debtors' schedules, there is minimal equity in the subject property. What equity cushion existed by virtue of the Debtor's valuation is being consumed by the missed payments.

7.

Good cause exists to grant relief from the automatic stay of 11 U.S.C. Section 362 and permit Movant to proceed with its state law rights and remedies against the Property, including non-judicial foreclosure, and apply the net proceeds therefrom to its claim herein. 11 U.S.C. §362 (d) (1) and (2).

WHEREFORE, the Movant prays that the Court grant relief as follows:

(a) Vacate the automatic stay of 11 U.S.C. § 362 and permit Movant to exercise its state law rights and remedies, against the Debtor and the Property.

(b) Set a hearing on Movant's Motion For Relief From Stay within thirty (30) days as required by 11 U.S.C. § 362(e).

(c) Grant such other and further relief as the Court may deem just and proper.

(d) Provide that any Order entered shall be effective and enforceable immediately upon entry.

On this 16th day of January 2019.

Respectfully submitted,

MACEY, WILENSKY & HENNINGS, LLP

/s/ Todd E. Hennings

Todd E. Hennings, Bar No. 347302

Suite 435

5500 Interstate North Parkway

Atlanta, GA 30328

(404) 584-1234

(404) 681-4355 facsimile

Attorneys for H-E Partners, Ltd,

assignee of Southcrest Bank, successor to

First National Bank of Polk County

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing MOTION FOR RELIEF FROM STAY and NOTICE OF ASSIGNMENT OF HEARING via first class mail, postage prepaid, and/or by the court using the CM/ECF system, which will send an electronic e-mail notification to the parties as indicated below:

Brian R. Cahn
Brian R. Cahn & Associates, LLC
5 S. Public Square
Cartersville, GA 30120

Brandi L. Kirkland
c/o Mary Ida Townson
Suite 2200
191 Peachtree Street, NE
Atlanta, GA 30303-1740

Mary Ida Townson
Chapter 13 Trustee
Suite 2200
191 Peachtree Street, NE
Atlanta, GA 30303-1740

Kenneth L. Thomas
PO Box 526
Aragon, GA 30104
(via U.S. regular mail)

U.S. Trustee
Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

On this 16th day of January, 2019.

/s/Todd E. Hennings
Todd E. Hennings, Bar No. 347302